

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF NEW YORK

JOHN ZDZIEBLOSKI and SHEILA ZDZIEBLOSKI,

Plaintiffs,
-against-

Civil Action No. 1:15-CV-298
(LEK/RFT)

THE TOWN OF EAST GREENBUSH,

Defendant

COMPLAINT

1. John Zdziebloski and Sheila Zdziebloski ("Plaintiffs") by their authority as citizens of the United States, allege as follows:

NATURE OF ACTION

2. This is a civil action seeking injunctive relief, penalties, attorney's fees and expenses under the Federal Water Pollution Control Act (Clean Water Act or CWA), 33 U.S.C. § 1251 et seq. against Defendant, Town of East Greenbush, for past and ongoing violations of the Clean Water Act, specifically 33 U.S.C. §§ 1311(a) and 1342(b) because of the unauthorized discharge of pollutants by Defendant into the waters of the United States.

JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. §§ 1331 (federal question), 1335(a) (federal penalties), and the Clean Water Act, 33 U.S.C. § 1365 (Citizen Suits).

4. Venue is proper in this District pursuant to 28 USC §§ 1331(b)(1), 1331(b)(2) and 1335(a), because Defendant resides in this District and the alleged violations in this complaint occurred in this District, and the penalty to be recovered accrued in this District.

AUTHORITY

5. The Plaintiffs have authority to bring this action as a Citizens' Suit under the Clean Water Act pursuant to 33 U.S.C. § 1365.

DEFENDANT

6. Defendant Town of East Greenbush is a New York State municipality organized and existing under the laws of the State of New York with a principal place of business at Town of East Greenbush Town Hall, 225 Columbia Turnpike, Rensselaer, New York 12144 in this District. The Town of East Greenbush is a person subject to suit under the Clean Water Act.

7. Defendant owns, operates and controls a series of stormwater structures including stormwater structures in the Town of East Greenbush at Celeste Drive and generally from and within a neighborhood at, near and around Celeste Drive known as Onderdonk Estates (the "Stormwater System"), which leads to a point source and discreet conveyance.

8. Plaintiffs are the owners of a home at 16 Worthman Lane, Rensselaer, New York. Plaintiffs have owned this home for decades. ("Plaintiffs' Property").

9. Plaintiffs' Property is generally southeast and down gradient from the Stormwater System and conveyances owned and controlled by Defendant at and around Celeste Drive and the Onderdonk Estates.

10. A pond generally known as Sheila Pond, which is among the waters of the United States, and its associated wetlands, are between and lying partly on the Plaintiffs' Property and partly on Defendant's referenced property.

11. Congress enacted the CWA "to restore and maintain the chemical, physical and biological integrity of the nation's waters." 33 U.S.C. § 1251. Accordingly, CWA 33 U.S.C. §

1311 prohibits the discharge of pollutants into the waters of the United States except when authorized by a permit pursuant to Section 33 U.S.C. 1342.

12. Defendant's municipal Stormwater System has been and is discharging one or more pollutants from a discreet conveyance on or at Defendant's property into Sheila Pond.

13. Defendant does not have a permit to discharge pollutants into Sheila Pond. The pollutants include silt, mud, dirt, clay and runoff from streets.

14. The unpermitted Stormwater System and pollutants are improperly managed by the Defendant, which causes a discharge through pipes and eroded ditches and other earthen discreet conveyances into Sheila Pond. These pollutants and the failure to properly manage the stormwater that carries them, have caused and continue to cause the siltation of Sheila Pond, violating the water quality standards of Sheila Pond.

15. Defendant's unpermitted discharge is continually filling Sheila Pond, decreasing the assimilative capacity of Sheila Pond and its associated wetlands to contain all of the stormwater that enters it.

16. Defendant's illegal and unpermitted discharges contribute to flood conditions.

17. Defendant's illegal discharge of pollutants and ongoing violations of the Clean Water Act's permit requirements have caused damage to Plaintiff's property and threaten further damage unless an injunction is issued.

18. Defendant's mismanagement of stormwater discharges through conveyances upgradient of Plaintiffs' Property and into Sheila Pond violates 33 U.S.C. §§ 1311 and 1342.

PLAINTIFFS HAVE MET CONDITIONS PRECEDENT TO SUIT

19. On or about December 2, 2014, Plaintiffs properly served and duly notified the Defendant Town of East Greenbush and all appropriate Federal and State authorities concerning

Plaintiffs' intention to commence this suit. All notices were sent by Certified Mail and a copy of Plaintiffs' Notice Letter is attached hereto as Exhibit A and incorporated by this reference.

20. More than 60 days have passed since Plaintiffs' Notice Letter, Exhibit A.

ONGOING VIOLATION

21. Defendant has not abated, ceased or remedied any of its violations of the Clean Water Act as alleged herein and as referenced in Exhibit A and this Complaint.

22. Upon information and belief, no Federal authority or State authority has sought to enjoin or has enjoined any of the ongoing violations of the Clean Water Act alleged in Exhibit A and this Complaint.

23. Therefore, the allegations in this Complaint are ripe for adjudication.

24. Plaintiffs are "citizens" under the Clean Water Act. They have an interest in preserving the environmental quality and assimilative capacity of Sheila Pond and an interest in protecting their property from flooding. All of these interests are adversely affected by Defendants' illegal discharges and ongoing discharges of pollutants into Sheila Pond.

25. Plaintiffs are injured in fact by Defendants' violations of the Clean Water Act because they live near and at Sheila Pond and live in fear of siltation, pollution and flooding of Sheila Pond.

WHEREFORE, the Plaintiffs demand:

1. an injunction against the illegal discharges;
2. an injunction directing removal of the siltation from Sheila Pond;
3. an injunction directing ecological restoration of Sheila Pond;
4. an injunction directing that Defendant apply for and receive federal and state permits to discharge stormwater from the Stormwater System;

5. an injunction directing calculation and restoration of the assimilative capacity of Sheila Pond and its associated wetlands;
6. construction of a detention basin that is properly engineered for Onderdonk Estates, consistent with good engineering practices and the CWA, which protects against flooding Plaintiffs' Property;
7. penalties for all past violations of the CWA in accordance with law;
8. an award of reasonable costs to Plaintiffs, 33 U.S.C. § 1365(d);
9. An award of attorney and expert fees to Plaintiffs, 33 U.S.C. §1365(d); and
10. any other relief deemed just and appropriate by the Federal District Court of the Northern District of New York pursuant to 33 U.S.C. § 1365(d).

Respectfully submitted,

/S
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